

**ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN MAUZY PITTMAN, CHIEF JUDGE  
DIVISION III**

CA06-330

February 14, 2007

BEVERLY ENTERPRISES –  
ARKANSAS, INC., ET AL.  
APPELLANTS  
V.

MIKE JARRETT, AS  
ADMINISTRATOR OF THE ESTATE  
OF SYLVIA JARRETT  
APPELLEE

APPEAL FROM THE WHITE COUNTY  
CIRCUIT COURT  
[NO. CIV-05-25]

HON. WILLIAM P. MILLS,  
JUDGE

SUBSTITUTED OPINION  
AFFIRMED

Appellant,<sup>1</sup> Beverly Enterprises – Arkansas, Inc., is a foreign corporation with its principal place of business in Arkansas. It is in the business of operating nursing homes. The decedent, Sylvia Jarrett, was a resident of one of appellant’s nursing homes when she died in January 2004. The administrator of her estate filed suit against appellant for medical

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<sup>1</sup>The order appealed from listed as defendants Beverly Enterprises-Arkansas, Inc.; Beverly Health and Rehabilitation Services, Inc.; and Beverly Enterprises, Inc. Explaining that the “Answer filed by Defendant” was untimely, the order stated that “Defendant’s Answer is stricken and Default Judgment as to liability is granted.” All three of the entities listed as defendants have appealed from that order. Because our jurisdiction is proper under Ark. R. App. P. – Civil (2)(a)(4), *see Arnold Fireworks Display, Inc. v. Schmidt*, 307 Ark. 316, 820 S.W.2d 444 (1991), and because we have not been presented with the question on appeal, we express no opinion on the question of whether the order appealed from was applicable to each and all of the appealing entities. We simply affirm the order appealed from.

malpractice, negligence, violations of the Residents' Rights Act, and wrongful death. The complaint was personally served on appellant's agent for service of process, the Corporation Service Company, on February 9, 2005. As a non-resident, appellant had thirty days in which to file an answer under Ark. R. Civ. P. 12(a)(1)(A). Without filing a request for extension, appellant filed its answer thirty days too late. Appellee moved to strike the answer and for default judgment. After a hearing, the trial court found that appellant offered no justifiable excuse for its failure to file a timely answer, granted appellee's motion to strike, and entered default judgment against appellant.

A trial court's granting or denial of a motion to set aside default judgment will be affirmed in the absence of an abuse of discretion. *Smith v. Sidney Moncrief Pontiac, Buick, GMC Co.*, 353 Ark. 701, 120 S.W.3d 525 (2003). Pursuant to Rule 55(c)(1) of the Arkansas Rules of Civil Procedure, the trial court may, upon motion, set aside a default judgment previously entered for mistake, inadvertence, surprise, or excusable neglect. Ark. R. Civ. P. 55(c)(1) (2006).

Appellant argues that the trial court abused its discretion in granting appellee's motions because the late answer was the result of excusable neglect. Appellant admits that its agent for service of process forwarded the complaint to its legal department, where its receipt was verified, but argues that it was "unaware" of the lawsuit because the complaint was misplaced by appellant's clerical help and was never received by appellant's in-house counsel. We disagree. The circumstances of this case are quite similar to those presented

in *Nucor Corp. v. Kilman*, 358 Ark. 107, 186 S.W.3d 720 (2004), where a corporation's employee charged with monitoring lawsuits and working with attorneys who received suit papers but, because he was extremely busy with "year-end business" and "holiday crunch," failed to inform corporate attorneys about the suit. Here, although appellant's legal department may indeed have been busy, the trial court properly could have viewed this as a negligent failure to secure adequate help rather than an instance of excusable neglect. We cannot say that the trial court abused its discretion.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.